claimed by virtue of an easement, those rights must be shown to inhere in the easement. The rights claimed however are rights inherent in land. They cannot exist apart from land, and cannot be assigned unless the land is conveyed. An easement is a right only of limited user, and does not include ownership of the land; so if it has any natural rights at all, they are not the natural rights of land, but of the easement itself, and it seems scarcely possible that an incorporeal hereditament could have the same natural rights as the land itself. By the contract or grant rights will arise against the grantor, and these obligations will be enforced by the courts, *Stockport Waterworks Co.* v. *Potter*, supra; *Elliot* v. *Fitchburg R. Co.* (Mass. 1852) 10 Cush. 191; but when under the grant the rights of third persons are interfered with the grant will be no defence, *Garwood* v. *New York C. R.* (1881) 83 N. Y. 400; nor, it would seem, could the grant impose duties on third persons.

The extent of the right of a riparian proprietor has not been clearly defined. A reasonable use on his own land is generally allowed, but in some cases this use is confined to riparian land, *Bathgate* v. *Irvine* (1899) 126 Cal. 135. Under such a ruling he could of course not make the grant supported in the principal case, and even where the reasonableness is determined as a matter of fact the case seems to go beyond the balance of authority.

CONTRIBUTION IN SURETYSHIP.—Contribution among cosureties is a doctrine which the courts have generally been more willing to extend than to restrict, but in the case of *Tompkins* v. *Morton Trust Co.* (1904) 86 N. Y. Supp. 520, the Appellate Division of the New York Supreme Court has imposed a new limitation. In that case the plaintiff had pledged stock to a broker with authority to the broker to repledge to the amount of his lien. One Hastings had deposited stock with the broker, but merely for safekeeping and with no authority to use it. The broker pledged both the lots of stock to the defendant as security for money borrowed, and the court found that the circumstances were such that the defendant was a bona fide holder of all the stock and was entitled to use either portion or the whole to satisfy its lien. The plaintiff's stock was sold to satisfy the lien, and he claimed contribution from Hastings, but the court held there could be no recovery.

Cosuretyship exists wherever two or more persons are equally liable for another's obligation, *Deering* v. *Winchelsea* (1787) 2 B. & P. 270, and Coke points out that contribution has been imposed by the law not only in cases of cosuretyship, but wherever this equal liability existed and all did not share in discharging the obligation. *Harbart's Case* (1576) 3 Coke 11. The right does not arise by contract, nor does it depend on subrogation, *Sibley* v. *McAllaster* (1836) 8 N. H. 389; 1 Story's Eq. Jur. 506, note, but it is a duty imposed by law purely on equitable grounds, and these are equities between the sureties. No surety can relieve himself from the liability by a release from the creditor, Ex parte *Gifford* (1802) 6 Ves. 805, nor can the debtor confer advantages on one surety which will not be available to

the others, *Steel* v. *Dixon* (1881) 17 Ch. Div. 825; but it seems he can avoid the liability only by contract with the other sureties, as in *Durbin* v. *Kinney* (1890) 19 Ore. 71, though he may by his own inequitable conduct toward the other sureties deprive himself of the right, as in *Block* v. *Estes* (1887) 92 Mo. 318.

Since *Deering* v. *Winchelsea*, supra, it has been uniformly held that persons may be cosureties and liable to contribution although each assumed his obligation at a different time, by a different instrument, and without knowledge that there were other sureties, and it should not affect the question that they became sureties through the fraud of the debtor, provided the creditor has acted in good faith and parted with value. *McBride* v. *Potter-Lovell Co.* (1897) 169 Mass. 7; *Whitlock* v. *National Bank* (N. Y. 1899) 29 Misc. 84. The principal case seems unsound in denying recovery altogether, though the amount of recovery might be affected by the broker's lien.

Avoidance of Deed by Incompetent.—Since the decision in the case of *Price* v. *Berrington* (1850) 3 Macn. & G. 485, it has been the settled law of England that the deed of one insane, but not judicially declared incompetent cannot be avoided either by himself on regaining reason, or by his committee without a return of the consideration. The case was decided upon no direct authority, but by an extension of the rule of *Niell* v. *Morley* (1804) 9 Ves. 478, that equity will not set aside the contract of an incompetent when the parties cannot be placed in statu quo. A recent case in Connecticut, *Coburn* v. *Raymond* (1904) 57 Atl. 116, while affirming the English rule, calls attention to the fact that American authorities are not in harmony, and that Massachusetts in repudiating that rule has been followed in several States. *Gibson* v. *Soper* (1856) 6 Gray 279; *Hovey* v. *Hobson* (1866) 53 Me. 451, though opposed by the balance of authority. The Massachusetts courts base their rule upon the analogy of the incompetent to the infant and urge that each is entitled to the equal protection of the law.

However similar the helplessness of the incompetent may be to that of the infant, the positions of these two in the English common law have been essentially different. The deeds and contracts of each, in the absence of mala fides in the one with whom they deal, are voidable and not void. But the plea of infancy was always heard at law, whereas, insanity was no defence, since, by a rule of Littleton's, one could not be permitted to stultify himself. The infant upon arriving at majority might by re-entry regain possession of the lands which he had deeded away during minority, and his deed could be met with the plea of infancy. 2 Coke on Littleton 247b; but the insane person could not re-enter, and the avoidance of his deed might be accomplished only by the king acting in his behalf, or by his heir. 2 Coke on Littleton 247a. Littleton's rule was justly criticised as absurd and mischievous, and it has been partially repudiated. Where the condition of the insane person was known to the one dealing with him at the time, the insanity might be pleaded at law to avoid a contract, *Dane* v. *Kirkwall* (1838) 8 C. & P. 679, and apparently even